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Supreme Court of the United States

OCTOBER TERM, 1960

NO. 673

EARL CHAVIS, PETITIONER,

versus

E. I. DuPONT DE NEMOURS AND COMPANY, RESPONDENT

BRIEF IN OPPOSITION TO CERTIORARI

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THE STATE COMMERCIAL PRINTING CO.

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OPINIONS BELOW

The District Court's Order for Summary Judgment of April 27, 1960, is not reported. It will be found in the Appendix to this brief (A. 32). The opinion of the Court of Appeals, affirming the judgment, is reported as *Chavis v. Du Pont*, 283 F. 2d 929.

JURISDICTION

The jurisdictional requisites are stated in the Petition.

QUESTIONS PRESENTED

1. Under the South Carolina Workmen's Compensation Act, where the undisputed facts establish the relationship of principal contractor, subcontractor, and employee of a subcontractor, and such employee, injured on the job, institutes a common law action in tort against the principal contractor, does the question of whether the principal con-

tractor is liable to the injured employee at common law present a jury issue?

2. Under South Carolina law is the liability of a principal contractor to a subcontractor's employee, injured on the job, limited to recovery under the Workmen's Compensation Act, or has the employee an additional right to recover from the principal contractor at common law?

3. Does this Petition present such issue as will justify the issuance of a Writ?

STATEMENT

In October, 1950 the United States, represented by the Atomic Energy Commission (AEC), entered into a contract with E. I. du Pont de Nemours and Company (du Pont) under which du Pont undertook "to do all things which in [its] judgment [were] necessary or desirable for the design, construction, installation and operation of the facilities, and the performance of other work" at AEC's Savannah River Atomic Energy Plant in South Carolina. The contract and its supplements authorized the subletting of portions of the work to be done under the contract. Pursuant to such authorization, du Pont sublet to Miller Electric Company and Dunn Electric Company (Miller-Dunn), a joint venture, certain electrical work on a cost-plus-a-fixed-fee basis. (R. pp. 25-30).

The contract between AEC and du Pont required workmen's compensation insurance affording coverage to du Pont and to all tiers of cost-plus-a-fixed-fee subcontractors, such as Miller-Dunn. Pursuant thereto, du Pont had in force at the time of Petitioner's (Chavis') injury workmen's compensation coverage with Employers Mutual Liability Insurance Company of Wisconsin (Employers Mutual). The subcontract between du Pont and Miller-Dunn provided that du Pont would provide at no cost to that Subcontractor workmen's compensation coverage in accordance with the laws of South Carolina, covering all of the Sub-

contractor's employees engaged at the plant site in work contemplated by the subcontract.

On July 30, 1953, the Petitioner, Chavis, an employee of Miller-Dunn, while engaged in removing electrical equipment from a pole located on the plant site of the Savannah River Plant, fell from the pole and sustained serious injuries thereby.

Shortly thereafter he agreed with Employers Mutual as compensation carrier and du Pont as employer on the amount to be paid him as workmen's compensation, received an award from the South Carolina Industrial Commission; and, in December, 1954, upon his application and with the approval of the Industrial Commission, received a lump sum payment in full settlement. (R. pp. 31-38).

THE PROCEEDINGS BELOW

This action, charging actionable negligence on the part of du Pont, was instituted in the District Court on July 16, 1959, shortly before the expiration of the six-year period prescribed in the South Carolina statute of limitations. The answer included, inter alia, the defense that du Pont, the principal contractor, was statutory employer of the plaintiff, and that plaintiff's only remedy was under the South Carolina Workmen's Compensation Act, under which he had filed his claim and received compensation for his injuries.

The District Court granted du Pont's motion for summary judgment, holding that under the undisputed facts in this case du Pont was a "statutory employer" of plaintiff within the meaning of the South Carolina Workmen's Compensation Act. (A. 32). The Court of Appeals affirmed. (A. 19).[1]

[1] Before the District Court and before the Court of Appeals du Pont tendered the following additional grounds for summary judgment:

1. Where an employee of a subcontractor accepts workmen's compensation benefits from the compensation carrier of a general contractor, he may not thereafter maintain a common law action against the general contractor based

REASONS FOR DENYING THE WRIT

I

The Decision Below Is Clearly Correct

The Petitioner concedes (1) that du Pont was engaged as the principal contractor under a written contract with the United States, represented by AEC, to construct AEC's Savannah River Atomic Energy Plant, (2) that Miller-Dunn was a subcontractor to perform some of this work, under a written contract with du Pont, (3) that Petitioner Chavis was an employee of Miller-Dunn, and (4) that he received injuries while engaged in performing work at the Savannah River Plant on this job. (Pet. 3).

On these undisputed facts, the principal contractor (du Pont) is responsible for workmen's compensation benefits to the injured employee (Chavis) of the subcontractor (Miller-Dunn), under the provisions of the South Carolina Workmen's Compensation Act. Section 19 of the original Act (39 Stat. 1231), set out in its original form in the footnote, (A. 20, 21), is now codified in the South Carolina Code of 1952 as Sections 72-111 through 72-116. By reason of its obligation to pay workmen's compensation the principal contractor, du Pont, is relieved of common law liability to the injured employee. S. C. Code of 1952, Section 72-121. (A. 31).

The principal contractor is within the provisions of the Compensation Act regardless of whether the "owner" is

upon the same injuries for which he has been paid workmen's compensation (R. 31-38).

2. Where a general contractor's compensation carrier has paid an employee of a subcontractor compensation benefits based upon an accidental injury to the employee arising out of and in the course of his employment, such employee may not thereafter maintain a common law action to recover for those same injuries, without the consent of the carrier, and without giving such carrier the three months notice and request required by Section 72-126 of the South Carolina Code. (R. 15-18). (A. 33, 34.)

Neither Court found it necessary to pass upon these positions. We submit that both are sound and that each is an additional reason why the judgment was proper.

or is not included therein. If the work undertaken by the principal contractor is a part of the trade, business or occupation of the "owner", Section 72-111 makes the owner the top employer in the chain of employers, and specifically makes the principal contractor a "subcontractor" under such owner, next below the owner in the descending chain of employers.

If the work undertaken by the principal contractor is not a part of the trade, business or occupation of the owner, then such owner is outside the chain of employers, and the principal contractor is the top employer in the scale of employers. In either situation the principal contractor is included within the provisions of the Compensation Act, and is liable for workmen's compensation benefits to any employee, whether of the principal contractor or of a subcontractor, injured while performing work which the principal contractor had undertaken by contract to perform for the owner.

The undisputed facts here bring this case squarely within the rule of *Smith v. Fulmer*, 198 S.C. 91, 96, 15 S.E. 2d 681, 683. There, in a proceeding under the Workmen's Compensation Act, defendant Fulmer contracted with the State Highway Department to build a bridge. He sublet to Sherard the work of making the fills. Deceased Smith, for whose death this claim was made, was an employee of Sherard. While engaged in his employment, Smith was accidentally killed. Fulmer, the principal contractor, was held liable for workmen's compensation benefits to the dependents of the deceased employee. The Court said that the true test is: "Was the employee doing something for the subcontractor which bore some reasonably direct relation to the performance of the work undertaken by the contractor?" Here, the United States (AEC) occupies a position similar to that of the Highway Department, du Pont a position similar to that of Fulmer, Miller-Dunn a position similar to that of Sherard, and Chavis a position similar to that of Smith.

When Sections 72-111 and 72-112 are read in conjunction with Sections 72-113 through 72-116, the liability of the principal contractor under the Compensation Act to injured employees of subcontractors is even more firmly established. *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 342, 2 S.E. 2d 825; *Younginer v. J. A. Jones Construction Company*, 215 S.C. 135, 143, 54 S.E. 2d 545, 548. The rule in South Carolina is in accord with the interpretation given similar statutory provisions in other States. *Sykes v. Stone and Webster Engineering Corporation*, 186 Va. 116, 41 S.E. 2d 469; *Anderson v. Thorington Construction Company*, 201 Va. 266, 110 S.E. 2d 396.

II

There Is No Conflict Of Decision

Relying on *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*, 356 U.S. 325, rev. 238 F. 2d 346, the Petitioner (pp. 7-9) urges that he was entitled to a jury trial on the issue of whether the South Carolina statute brings the liability of a principal contractor to an injured employee of a subcontractor within the provisions of the Compensation Act. In so doing he misconceives the holding of that decision.

In *Byrd v. Blue Ridge*, the injured employee of a principal *contractor* brought a common law action against the *owner*. In order to determine whether the common law action was barred by Section 72-121 of the Compensation Act, (A. 31), it was necessary to determine whether the owner, Blue Ridge, was within the coverage of the Act, and thus responsible to the injured employee, Byrd, for workmen's compensation benefits. This in turn depended upon whether the work being performed by the injured employee, (Byrd), was a part of the "trade, business or occupation" of the owner, (Blue Ridge). There was a conflict of evidence on this point. The Court held that in Federal Courts this conflict on a factual issue should be resolved by a jury.

Petitioner likewise relies on *Magenau v. Aetna Freight Lines, Inc.*, 360 U.S. 273, in support of the same position; but there the action was brought against the *owner*, and the evidence raised issues of fact as to (1) whether the deceased was an employee of Aetna, the owner, and (2) if he was an employee, whether he was a casual employee.

Neither *Byrd v. Blue Ridge* nor *Magenau v. Aetna* is applicable here for the reasons that (1) here the injured employee (Chavis) is suing the principal contractor (du Pont), and not the owner (the United States), and the provision for compensation liability of the owner (that the work must be a part of its trade, business or occupation) does not apply in determining the workmen's compensation liability of the principal contractor, under the South Carolina Workmen's Compensation Act, and (2) here there is no disputed issue of fact. It is conceded that the United States (AEC) was the owner, du Pont was the principal contractor, Miller-Dunn was a subcontractor under du Pont, Chavis was an employee of Miller-Dunn, and Chavis was engaged in performing work included in the prime contract when he was injured. No other fact is pertinent to the issue.

Under these conceded facts the only issue before the two lower Courts was whether the correct interpretation of the South Carolina Workmen's Compensation Act brought the principal contractor (du Pont) within its provisions and thus liable for the payment of workmen's compensation benefits to an employee of a subcontractor; and, if so, not liable at common law. *Byrd v. Blue Ridge* does not hold that this legal issue of statutory interpretation is one that should be submitted to a jury.

III

No Important Issue Of Federal Law Is Present.

Ordinarily, this Court accepts the determination of local law by the Court of Appeals. *Ragan v. Merchants Transfer*

& Warehouse Company, Inc., 337 U.S. 530. The District Court first, and the Court of Appeals thereafter, have construed the meaning of a South Carolina statute. The jurisdiction of the Supreme Court to issue certiorari to the Courts of Appeals was given (1) to secure uniformity of decision between those courts, and (2) to bring up cases involving questions of importance which it is in the public interest to have decided by the Supreme Court. It was not given merely to afford the defeated party in the Court of Appeals a second appellate review. *Magnum Import Company v. Coty*, 262 U.S. 159, 163.

Presented here is no conflict between the interpretation given the South Carolina statutes by its Supreme Court and that placed on them by the Court of Appeals and the District Court, no conflict between the decisions of the Courts below and any opinions of this Court, and no conflict of opinion on a Federal question. In reality there is no Federal question presented.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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ORDER FOR SUMMARY JUDGMENT

The above case is before me upon motion of the defendant for summary judgment upon the grounds stated in the notice of the motion.

After a careful consideration of the oral arguments and written briefs of counsel for the parties, and the undisputed facts in the case, it is my opinion that the defendant in this case was the "statutory employer" of the plaintiff under the South Carolina Workmen's Compensation Act at the time he received his injuries alleged in the complaint. *Code of Laws of South Carolina*, 1952, Section 72-121; *Smith v. Fulmer*, 198 S.C. 91, 15 S.E. (2d) 681; *Marchbanks v. Duke*, 190 S.C. 336, 2 S.E. (2d) 825; *Younginer v. J. A. Jones Construction Co.*, 215 S.C. 135, 54 S.E. (2d) 545; *Sykes v. Stone and Webster Engineering Corporation*, 186 Va. 116, 41 S.E. (2d) 469.

The remedies provided under the South Carolina Workmen's Compensation Act for "statutory employees" are exclusive and under its provisions "statutory employees" are deprived of their common law action against their "statutory employers".

Having reached this conclusion, it is not necessary for me to pass upon the other grounds in the motion.

I must conclude, therefore, that the motion for summary judgment should be granted, and

IT IS SO ORDERED.

/s/ C. C. WYCHE,
United States District Judge.
(Sitting by Designation.)

Dated:

Spartanburg, South Carolina,
April 27, 1960.

STATUTORY PROVISIONS

§ 72-123. *Only one remedy available.*

Either the acceptance of an award under this Title or the procurement and collection of a judgment in an action at law shall be a bar to proceeding further with the alternate remedy.

1942 Code § 7035-11; 1936 (39) 1231.

§ 72-124. *Subrogation of employer to employee's claim against third person.*

The acceptance of an award under this Title against an employer for compensation for the injury or death of an employee shall operate as an assignment to the employer of any right to recover damages which the injured employee or his personal representative or other person may have against any other person for such injury or death and such employer shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative the legal liability of such other person. If the injured employee, his personal representative or other person entitled so to do has made a claim under this Title against his employer and has not proceeded against such other person, the employer may, in order to prevent the loss of his rights by the passage of time, institute such action prior to the making of an award under this Title.

1942 Code § 7035-11; 1936 (39) 1231.

§ 72-126. *When injured employee, etc., may bring suit against third party.*

Whenever an employer or an insurance carrier has become subrogated to the right of an employee or his representative to recover damages against a third person who has caused or contributed to the injury or death of the employee, as provided in §§ 72-124 and 72-422 and such employer or carrier refuses to bring an action against such third party for three months after written request (which

may be made by registered mail) by the employee or his representative, the employee or his representative may bring an action in his own name and for his own benefit against such third party. The failure of an employer or insurance carrier to institute such action within three months after written request (which may be made by registered mail) by the employee or his representative shall be conclusively deemed a refusal within the meaning of this section.

1942 Code § 7035-12; 1941 (42) 1314.